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- B. Fee Schedule
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- G. Certification of No Safety Impact Positions

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H. GLO Contract No. 19-147-001-B489, as amended

1.3 Parts Incorporated

The attached exhibits are incorporated into this Contract.

1.4 Controlling Parts

If a conflict among the sections and exhibits arises, the articles control over the exhibits.

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1.5 Signatures

The City and Contractor have signed this Contract in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):**

CONTRACTOR’S NAME

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax ID No.:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Housing and Community
Development Department

City Controller

APPROVED:

DATE COUNTERSIGNED:

Chief Procurement Officer
APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

ARTICLE 2. DEFINITIONS

As used in this Contract, the following terms have the meanings given below:

"Billing Rate" means the all-inclusive rates set forth in **Exhibit "B"** for each job category of personnel providing services. It includes salary cost, labor overhead, general and administrative overhead and profit. The charge for Contractor's services shall be computed separately for each employee who performs services by multiplying the number of hours the employee performs services by the hourly Billing Rate applicable to that employee's job category. Subject to possible Billing Rate increases in the option years (if exercised) described in paragraph 5.1, from the Countersignature Date through the end of the Term, Contractor shall charge City the Billing Rates set forth in **Exhibit "B"**. If an option year is exercised by the Director, an increase may be added to some or all of the Billing Rates set forth in **Exhibit "B"** at the sole discretion of the Director. At such time, the increased Billing Rates will automatically become a part of **Exhibit "B"**. If at any time, additional employee categories are required to accomplish services herein, the Director may authorize in writing the additional employee category which will automatically become a part of **Exhibit "C"** and the corresponding Billing Rate which will automatically become a part of **Exhibit "B"**.

"C.F.R." means the Code of Federal Regulations, which contains the regulations promulgated by Federal Agencies in accordance with the federal Administrative Procedure Act, specifically Title 5, Chapter 551, of the United States Code.

"CDBG-DR17" means Community Development Block Grant funds allocated to the City of Houston for Hurricane Harvey recovery.

"Chief Procurement Officer" (CPO) is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Attorney" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.

"Contract" means this document including all exhibits and amendments by written agreement of the parties.

"Contractor" is defined in the preamble of this Agreement and includes its permitted successors and assigns.

"Countersignature Date" means the date shown as the date countersigned by the City Controller on the signature page of this Agreement.

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"Director" means the Director of the Housing and Community Development Department of the City, or its designee.

"Documents" means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, computer programs, operating manuals, models, photographs, specifications, the original tracings of all drawings and plans, and other work products obtained by or prepared by the Contractor for a Project pursuant to a Letter of Authorization in accordance with the Contract.

"GLO Harvey Contract" means the subrecipient agreement between the City and the Texas General Land Office ("GLO"), GLO Contract No. 19-147-001-B489, as amended, Community Development Block Grant Disaster Recovery Program Projects Non-Research & Development Harvey Round 1 Funding (signed by the City Controller on January 4, 2019 and approved by City of Houston Ordinance No. 2019-10), which is attached as **Exhibit "H"**.

"HCDD" means the City of Houston's Housing and Community Development Department.

"Notice to Proceed" means a written communication from the City, signed by HCDD's Planning and Grants Management division, that authorizes Contractor to begin performance of work, containing, but not limited to, the following:

- (i) a declaration that the City has allocated adequate funds for that phase or service;
- (ii) a work description for each service Contractor will perform on a Task Order under the Notice to Proceed;

"Project" means the services to be performed as authorized by individual Task Order's in accordance with the Contract. The work described in each Task Order is an individual Project.

"Reimbursable Expenses" means (i) identifiable communication expenses including reasonable costs of copying and printing (other than for the Contractor's internal use) postage, message and delivery services other than for general correspondence, long-distance telephone charges incurred by the Contractor in the course of its performance under this Contract; (ii) upon prior written approval of the Director, the ordinary and reasonable costs of travel to, from and within the City of Houston by Contractor's employees or subcontractors, not to exceed the amount established under the City's then current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the Project, and reservations are made as far in advance as feasible; (iii) sales tax related to the Contractor's services under this Contract which it is legally required to pay; and (iv) as set forth in **Exhibit "B"**. It shall be the Contractor's responsibility to inform itself of the City's travel reimbursement policies.

"Task Order" means a contract directive from the Director which requires Contractor to render services as ordered.

"Time and Materials" means the method of payment based upon Contractor estimate of allowable costs such as actual cost of materials and direct labor hours charged at fixed hourly

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rates that reflect wages, general and administrative expenses, and profit. A time and materials proposal must set a ceiling price that the Contractor exceeds at its own risk. The estimate should detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; Reimbursable Costs; and profit.

ARTICLE 3. RIGHTS AND DUTIES OF CONTRACTOR

3.1 Scope of Services

3.1.1 Services in General

For and in consideration of the payment specified in this Contract, the Contractor shall provide all labor, material and supervision necessary to perform on-call planning services as set out in this Contract, including those in **Exhibit “A”**. Time is of the essence in the performance of this Contract.

Contractor shall perform the following services:

- 3.1.1.1 Provide prompt and efficient on-call planning services as may be required in a Task Order for each Project;
- 3.1.1.2 Submit electronic or written work plans within a specified timeframe to initiate work on each Task Order in compliance with Section 3.1.2.;
- 3.1.1.3 Contractor shall, at its own expense, employ all personnel and retain all Subcontractors (including the subcontractor on the Contractor Team, if any) as may be required to perform the services, and shall be solely responsible for their work, compensation, direction and conduct during the term of the Contract. Contractor and its Subcontractors will be expected to cooperate fully with HCDD personnel. Contractor will be expected to use substantially the same personnel and Subcontractors described in the proposal to perform the services. All personnel furnished by the Contractor, as required under the Contract, shall be employees or approved Subcontractors of the Contractor and not of the City.
- 3.1.1.4 Contractor may enter into subcontracts for specialized services as required for provision of the services. If the Contractor enters into subcontracts that are not identified in the Contract, authorization shall be subject to the prior written approval by HCDD of the Subcontractor, the scope of services, compensation, and the staff member responsible for supervising the performance of the Subcontractor's activities. Contractor, and not HCDD, will be responsible for the Subcontractor's work, acts, omissions and compliance with applicable rules and regulations set forth in this Agreement.
- 3.1.1.5 Contractor shall identify the member of Contractor’s staff who will have primary responsibility to perform and/or supervise and coordinate the provision of the services (the “Project Manager”).

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3.1.1.6 It is anticipated that the Contractor will lead a team of both members of the Contractor’s staff and/or the Contractor’s subcontractors in providing the services. Depending on categories selected by the Contractor, the team may include, without limitation, the following:

- (a) Data Scientist
- (b) Economic Analyst
- (c) Market Analyst
- (d) Research Analyst
- (e) Sustainability Specialist
- (f) Transportation Planner (non-A/E Services)
- (g) Urban Designer (non-A/E Services)
- (h) Urban Planner (non-A/E Services)

3.1.2 Task Order

Each Task Order issued will have its own process for selecting a Contractor from a pool of candidates. In response to Task Orders to be issued periodically by the City, Contractor shall submit a proposed Work Plan, as defined in Section 3.1.2.1., for on-call planning services in accordance with the Contract and each specific Task Order. Task Orders will be based on the categories of services outlined in **Exhibit “A”** Scope of Services. Costs will be reimbursed by the Housing and Community Development Department (HCDD) for items included on the Task Order and approved budget, with sufficient back-up documentation as determined in the sole discretion of the City and as allowable by the Contract and the Community Development Block Grant, Community Development Block Grant-Disaster Recovery and other applicable Federal, State and local regulations, including without limitation 24 C.F.R. Part 570 and 2 CFR Part 200. Contractor shall not begin work until it receives an issued Task Order from the City.

3.1.2.1 A Work Plan is Contractor’s proposed scope of work based on the services to be provided for a task order (“Work Plan”). Each Work Plan shall consist of the following:

- (i) The proposed scope of work based upon a specific Task Order;
- (ii) A cost proposal, by hourly rate, based on the contract rate. Hourly rate-based cost proposals may include a provision for Reimbursable Expenses (if any). “Reimbursable Expenses” are expenses related to providing the services, (e.g., cost of purchasing project-related industry data, printing, special mailings, etc.);
- (iii) An estimated schedule for completion, which shall include, without limitation, a detailed list of all tasks, sub-tasks, including approvals, submittals, milestones required in connection with the Task Order, and the time necessary to complete the various tasks, sub-tasks, including approvals, submittals, and milestones;

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- (iv) Projected completion/target dates for all required tasks to be performed in connection with the Task Order; and
- (v) Any other item this Contract requires to be included in a Work Plan or Task Order or to otherwise conform the Work Plan to this Contract.

3.2. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other persons of all significant events relating to the performance of this Agreement.

3.3 Schedule of Performance

3.3.1 The Director shall provide Contractor with a written Notice to Proceed specifying a start date to begin performance.

3.3.2 If Contractor requests an extension of time to complete its performance, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time so long as the extension does not exceed ninety (90) days. The extension must be in writing but does not require amendment of this Contract. Contractor is not entitled to damages for delay regardless of the cause of the delay.

3.4 Contractor's Personnel

3.4.1 The Contractor shall perform services under this Contract employing the people listed in its Fee Schedule in **Exhibit "B."** The Contractor may revise its Staffing Schedule, including changes in employee job categories, only with the prior written approval of the Director, after which the revision will automatically become a part of **Exhibit "B"**. The requested revision must be made within ten days after the Contractor receives a Task Order for a Project. The revised Staffing Schedule must include the following information for each professional-level employee proposed for assignment on the Project: (i) Name of employee; (ii) project role; (iii) job Category; (iv) applicable registration; (v) principal office of employment; (vi) summary of relevant experience; and (vii) start date and expected duration of assignment.

3.4.2 The Contractor shall not subcontract any part of its performance under this Contract without the prior written approval of the Director. In requesting such approval, the Contractor must provide the Director with the name of the proposed subcontractor, the nature of the services to be performed, and a copy of the proposed subcontract which, at a minimum, (i) includes the same information required of the Contractor in section and 3.4.1 through 3.4.7, and (ii) restricts the subcontractor from adding any mark-up to its reimbursable expenses and its all-inclusive billing rates. All testing and analytical laboratories must be approved in writing by Director. If such approval is given, Contractor shall be responsible for services performed by subcontractors to the same extent as if the services were performed by the Contractor.

3.4.3 The Director may require removal from the Project of any employee or subcontractor of the Contractor providing services under this Contract.

3.5 Reports

3.5.1 The Contractor or Subcontractor shall submit the following reports to the Director on the following dates:

3.5.1.1 The Contractor shall submit monthly progress reports to the City assigned Project Manager for the duration of the Task Order (“Progress Report”), commencing from the date Contractor receives the Notice To Proceed from HCDD’s Planning and Grants Management Division (“PGM”) staff and continuing each month thereafter to include a final report upon the completion of the Task Order (each monthly period during such time constituting a “Reporting Period”).

3.5.1.2 The Progress Report shall include an analysis of the Contractor’s progress, including the hours worked compared to the progress and deliverables, as it relates to the Task Order and the associated, approved Work Plan.

3.5.1.3 The Progress Report and documentation shall be submitted by the Project Manager for approval no later than five (5) business days following the close of each Reporting Period. The Progress Report shall include, but not be limited to, the following: (i) A narrative description of the services performed during the Reporting Period; (ii) the reasons for any delays in the targeted completion dates; (iii) changes in completion/target dates for the required services; (iv) the need and justification for any extensions of time; (v) budget status; and (vi) a narrative description of the services projected for the next Reporting Period.

3.6 Payment of Subcontractors

In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Contract, including Contractor’s employees. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR’S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.**

3.7 Release

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION

WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

3.8 Indemnification

3.8.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (i) CONTRACTOR AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (ii) THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (iii) THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

3.8.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR’S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

3.9 Subcontractors Indemnity

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.10 Indemnification Procedures

3.10.1 Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days.

3.10.1.1 The notice must include the following: (i) a description of the indemnification event in reasonable detail; (ii) the basis on which indemnification may be due; and (iii) the anticipated amount of the indemnified loss.

3.10.1.2 This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.10.2 Defense of Claims

3.10.2.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. However, Contractor may settle the claim without the consent or agreement of the City, unless: (i) it would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City; (ii) would require the City to pay amounts that Contractor does not fund in full; or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.10.2.2 Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.10.2.3 Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

3.11 Insurance

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3.11.1 Risk and Limits of Liability. Contractor shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> • Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	<ul style="list-style-type: none"> • Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	<ul style="list-style-type: none"> • \$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.11.2 If professional liability coverage is written on a "claims made" basis, Contractor shall also provide: (i) Proof of renewal each year for two years after substantial completion of the services; or (ii) In the alternative, evidence of extended reporting period coverage for two years after substantial completion; or (iii) a project liability policy for the services covered by this Agreement with a duration of two years after substantial completion.

3.11.3 Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the requirements of this Agreement. Prior to beginning performance under the Agreement, at any time upon the Director’s request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all Subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.11.4 Form of Insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance

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business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.11.5 Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. The City shall enjoy the same coverage as the named insured without regard to other provisions of this Agreement. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

3.11.6 Deductibles. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

3.11.7 Cancellation. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.11.8 Subrogation. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.

3.11.9 Subcontractors. Contractor shall require all subcontractors whose subcontracts exceed \$100,000.00 to provide proof of professional liability coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000.00 per claim.

3.11.10 Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Contract.

3.12 Warranties

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Contract.

3.13 Confidentiality

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and

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subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

3.14 Use of Work Products

Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, databases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications and improvements to them collectively “Documents”), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, Contractor, and Subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").

The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Contractor shall place a conspicuous notation on any Works which states that the City owns the Proprietary Rights.

Contractor shall execute all documents required by the Director to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Contractor’s assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Contractor shall deliver all Works to the City. Contractor shall obtain written agreements from the Authors that bind the Authors to the Terms in this Section.

All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire" under 17 U.S.C. §§101 and 201, as amended.

Contractor may retain copies of the Works for its archives. Contractor shall not otherwise use, sell, license, or market the Works.

3.15 License and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against Contractor and any of its employees, contractors or agents performing services under this Agreement.

3.16 Compliance with Laws

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Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances, which include, but are not limited to 2 C.F.R. Part 200 and 24 C.F.R. Part 570.

The City Intends to Utilize CDBG-DR Funding for this Agreement. Contractor must comply with all applicable governing local, state, and federal laws, executive orders, regulations, requirements, and guidelines, including but not limited to FR-5938-N-01, FR-6066-N-01, 24 C.F.R. part 570, and 2 C.F.R. part 200 and other Federal requirements. Contractor shall comply with all laws, codes and safety guidelines applicable to the work being performed. For all laws, codes and safety guidelines cited here or elsewhere in specifications, the revision or edition in effect at the time of performance of the work shall apply.

3.17 Compliance with Equal Opportunity Laws

Contractor shall comply with the City’s Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances. Further, Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, equal opportunity clause as summarized in **Exhibit “C”**.

3.18 MWBE Compliance

3.18.1 Contractor shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City’s Office of Business Opportunity (“OBO”) and will comply with them.

3.18.2 Contractor shall adhere to and comply with 2 CFR § 200.321 if subcontracts are to be let under this Agreement. Contractor, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women’s business enterprises, and labor surplus area firms are used when possible pursuant to 2 CFR Section § 200.321. Affirmative steps must include: (i) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (ii) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and (v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

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3.18.3 Contractor must clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWBE firms, the efforts to contact them, and other efforts to meet the above requirements.

3.19 Compliance with Environmental Laws

Contractor shall comply with all laws relating to environmental matters including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials, special wastes or other contaminants into environment and to generation, use, storage, transportation, or illegal disposal of solid wastes, hazardous materials, special wastes or other contaminants including, without limitation, the Comprehensive Environmental Response and Compensation and Liability Act (42 U.S.C § 9602 et seq.), the Hazardous Material Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976(42 USC. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) The Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f), the Occupational Safety and Health Act of 1970 (29 U.S.C §& 651 et seq.), the Emergency Planning and Community Right-to-know Act (42 U.S.C § 11001 et seq.), Texas Commission on Environmental Quality (TCEQ) (415 ILCS 5/1 through 5/56.6) and the Municipal Code of the City of Houston, each as amended or supplemented, and any analogous future or present local, state or Federal statutes, rules and regulation promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule regulation, permit or permit condition, order or directive regulating, relating to or imposing liability or standards of conduct concerning any hazardous materials or by Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions (collectively, “Environmental Laws”).

3.20 Section 3 Compliance

The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U. S.C. 170u, “Section 3”) and implementing regulations at 24 CFR Part 135 apply to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

3.21 Drug Abuse Detection and Deterrence

3.20.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the

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requirements and procedures set forth in the Mayor’s Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 (“Executive Order”), which is incorporated into this Contract and is on file in the City Secretary’s Office.

3.20.2 Before the City signs this Contract, Contractor shall file with the Contract Compliance Officer for Drug Testing (“CCODT”): (i) a copy of its drug-free workplace policy; (ii) the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit “E,”** together with a written designation of all safety impact positions; and (iv) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit “G.”** If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Contract or on completion of this Contract if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit “F.”** Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Contract.

3.20.3 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor’s employee work force.

3.20.4 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.22 Conflicts _____ of _____ Interest

3.22.1 Contractor shall comply with all conflicts of interest laws and regulations applicable to this Agreement. Contractor shall promptly disclose in writing to the City all actual or potential conflicts of interest relative to the performance of this Agreement.

3.22.2 If an actual or potential conflict arises between the City’s interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by fax transmission or telephone. If the Director consents to Contractor’s continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within 3 business days after receipt of Contractor’s notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

3.23 Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

3.24 Additions and Deletions

3.24.1 Additional Products and Services

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The Director may add additional deliverables and services by giving written notification to Contractor. For purposes of this Section, the “Effective Date” means the date on which Contractor receives written notification of the addition. As of the Effective Date, each item added is subject to this Contract, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date.

3.24.2 Exclusion of Products and Services

If a Deliverable or service that is subject to this Contract is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director may exclude it from the operation of this Contract by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded Deliverable from the sum otherwise due under this Contract.

3.24.3 Total Charge for Additions or Deletions

The total charges for additions and deletions to this Contract must never exceed 25% of the original contract amount unless: (i) the additions are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Govt. Code Chapter 252; or (ii) the City acquires the additions from Contractor through a competitive bid or competitive proposal.

3.25 Anti-Boycott of Israel

Contractor certifies that Contractor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

3.26 Zero Tolerance Policy for Human Trafficking and Related Activities

The requirements and terms of the City of Houston’s Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement’s effective date. Contractor shall notify the City’s Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.27 Preservation of Contracting Information

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention

SAMPLE

requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

ARTICLE 4. RIGHTS AND DUTIES OF CITY

4.1 Payment Terms

4.1.1 Fees, In General

Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in **Exhibit "A"** that are rendered by Contractor based upon monthly invoices showing the number of individual tasks and related services performed at the rates set forth in **Exhibit "B"**. The fees must only be paid from Allocated Funds as provided below.

4.1.2 Fees; Method of Payment

4.1.2.1 The Contractor shall perform services upon receipt of a Notice to Proceed signed by HCDD's Planning and Grants Management Division ("PGM") after submitting a Work Plan, as detailed in section 3.1.2.1, in response to a Task Order issued by the City. Contractor will execute individual, Time and Materials contracts with the City, which may require additional documentation to substantiate costs for each Task Order. This Agreement and each individual Task Order is subject to a not to exceed amount which Contractor exceeds at its own risk. Cost will be reimbursed by HCDD for items included on the Task Order and approved budget, with sufficient backup documentation as determined in the sole discretion of the City and as allowable by this Contract and the CDBG, CDBG-DR and other Federal and local regulations, including without limitation 24 C.F.R. Part 570 and 2 C.F.R. Part 200.

4.1.2.2 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing the hours worked in the preceding month and the corresponding hourly rates. The City's standard payment term is to

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pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

(a) Payment Time - 10 Days: 2% Discount

(b) Payment Time - 20 Days: 1% Discount

If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

4.1.2.3 The invoices for services rendered on a time and materials-based agreement must include the following: (i) a detailed description of the work performed; (ii) the Billing Rate and number of hours worked for each of Contractor's employees who worked on each Task Order during the invoice period. (Documentation must include employee name, Billing Rate, and hours expended. At the Director's sole discretion, supporting documentation may also include copies of original time sheets that Contractor certifies are true and accurate copies.); (iii) itemized Reimbursable Expenses, (iv) subcontract Cost, including a copy of the subcontractor's actual invoice and supporting documentation for itemized reimbursable expenses in amounts not to exceed the fee schedule set forth in of **Exhibit "B"**; and (v) if requested by the Director additional supporting documentation will be provided by subcontractor.

After the Contractor has successfully completed the performance to the Director's satisfaction of all required services for a Task Order, the City reimburse Contractor the total amount owed for the Project less any amounts paid.

4.1.2.4 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.1.2.5 With each monthly invoice and for each active Task Order, Contractor shall submit a monthly status report as detailed in section 3.5.

4.2 Limit of Appropriation

4.2.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

4.2.2 To comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated Three Million Two Hundred Thousand and 0/100 Dollars (\$3,200,000.00) to pay money for all Agreement's entered into for on-call planning (the "Original Allocation"). The executive and legislative officers of the

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City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.2.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS.

By the signature below, the City Controller certifies that, upon the request of the Director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation. \$_____

4.2.2.2 The Original Allocation plus all supplemental allocations are the “Allocated Funds.” The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for Services it provides. If Allocated Funds are exhausted, Contractor’s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.3 Access to Data

For any raw data created, assembled, used maintained, collected, or stored *by the Contractor for or on behalf of* the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Contract.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor’s use.

ARTICLE 5. TERMINATION

5.1 Contract Term

This Contract is effective on the Countersignature Date and remains in effect for three years from the Countersignature Date, unless sooner terminated under the terms of this Contract. The Director shall have the right in his sole discretion to extend this Contract for two additional one-

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year periods by giving Contractor advance written notice at least 30 days prior to the expiration of this Contract. After expiration of the Contract (as may be extended by options years), no additional Task Order's may be issued; however, for any Task Order issued prior to the expiration of the Contract, Contractor shall complete the work unless otherwise notified by the Director in writing. The Director may not amend any Task Order issued prior to the expiration of the Contract to add scope or time.

5.2 Termination for Convenience by City

The Director may terminate this Contract in whole or in part at any time by giving thirty (30) days written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate this Contract for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract and cancel all existing orders and subcontracts that are chargeable to this Contract. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Contract up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Article 4. unless the fees exceed the appropriated funds remaining under this Contract.

TERMINATION OF THIS CONTRACT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS CONTRACT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES, LOST PROFITS OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

The rights and remedies of the City provided in Section 5.2 are in addition to any other rights and remedies provided by law or under this Contract.

5.3 Termination for Cause by City

Any violation or breach of terms of this Contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties to this Contract. The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

If Contractor defaults under this Contract, the Director may either terminate this Contract or allow Contractor to cure the default as provided below. The City's rights to terminate this Contract for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- 5.3.1 Contractor fails to perform any of its duties under this Contract;
- 5.3.2 Contractor becomes insolvent;
- 5.3.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

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5.3.4 a receiver or trustee is appointed for Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director upon notice of termination, may terminate this Contract on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, promptly cancel all orders or subcontracts chargeable to this Contract and deliver all supplies and materials accumulated in performing this Contract to a place designated by the Director.

ARTICLE 6. MISCELLANEOUS

6.1 Independent Contractor

Contractor is an independent Contractor and shall perform the services provided for in this Contract in that capacity. The City has no control or supervisory powers over the manner or method of Contractors' performance under this Contract. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

6.2 Force Majeure

6.2.1 Timely performance by both parties is essential to this Contract. However, neither party is liable for reasonable delays in performing its obligations under this Contract to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Contract. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

6.2.2 This relief is not applicable unless the affected party does the following:

6.2.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

6.2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

6.2.3 The Director will review claims that a Force Majeure that directly impacts the City

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or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

6.2.4 The City may perform Contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Contract by the City.

6.2.5 If the Force Majeure continues for more than fourteen (14) days from the date performance is affected, the Director may terminate this Contract by giving seven (7) days' written notice to Contractor. This termination is not a default or breach of this Contract. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE CONTRACT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6.2.6 Contractor is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3 Severability

If any part of this Contract is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

6.4 Entire Agreement

This Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Contract.

6.5 Written Amendment

Unless otherwise specified elsewhere in this Contract, this Contract may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Contract.

6.6 Governing Law and Venue

This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.

6.7 Notices

All notices to either party to the Contract must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I of this Contract or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

6.8 Captions

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Captions contained in this Contract are for reference only, and, therefore, have no effect in construing this Contract. The captions are not restrictive of the subject matter of any section in this Contract.

6.9 Non-Waiver

If either party fails to require the other to perform a term of this Contract, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Contract.

Approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

6.10 Inspections and Audits

6.10.1 City representatives (including without limitation the Director and City Controller), State of Texas and Federal Government authorized representatives (collectively "Auditing Entities") may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for (i) the time period required by 2 CFR Section 200.333 (retention requirements for records) in the event the City receives federal funds for all or a portion of this Agreement, or (ii) seven (7) years after the Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.10.2 Upon reasonable written notice, not less than twenty-four (24) hours, Auditing Entities have the right to perform or have performed audits and inspections.

6.10.3 Audits of Contractor's books, documents, papers, and records, including electronic versions, pertaining to Services provided under this Agreement may include, but are not limited to:

- 6.10.3.1 payroll and personnel records, such as salaries, benefits and bonuses;
- 6.10.3.2 subcontractor agreements, records and invoices;
- 6.10.3.3 any accounting or management systems, or computers or servers on which City information is stored; and
- 6.10.3.4 all documents or files evidencing costs and underlying expenses relating to Contractor's performance.

6.10.4 Contractor has been advised that the City is the subrecipient of federal funds under CDBG-DR Federal Award Number B-17-DM-48-0001, awarded February 9, 2018, administered by the General Land Office under CFDA No. 14.228, "Community Development Block Grants/State's program and Non-Entitlement Grants in Hawaii". The City is a party to the GLO Harvey Contract, a copy of which has been made available to Contractor for review. Contractor shall comply with all terms of the GLO Harvey Contract, including but not limited to the provisions with respect to inspections and audits, and maintenance of records and documents, as if it were the City, including, without limitation, GLO Harvey Contract Article VII and Attachment D, as reproduced within **Exhibit "H"** to this Agreement. For purposes of Contractor's required compliance, "Subrecipient" shall refer to Contractor and "GLO" shall refer to the City within these

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Sections. Contractor shall cooperate fully with any request(s) made by the Director or any other entity with authority as provided therein in **Exhibit “H”**.

6.10.5 Contractor shall provide the Director, City Controller, the U.S. Department of Housing and Urban Development (“HUD”) Administrator or his authorized representatives, the Comptroller General of the United States, Inspectors General, the GLO, the Texas State Auditor’s Office or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making copies, audits, examinations, excerpts, and transcriptions. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6.10.6 Contractor shall provide the Director, City Controller, the HUD Administrator or his authorized representatives, the GLO, the Texas State Auditor’s Office or any other authorized representatives of these individuals or the State of Texas or Federal Government, as defined in Section 6.10.1 access to work sites pertaining to the work being completed.

6.10.7 If any audit or inspection performed by HUD, GLO, the City or any other local, state or federal entity providing funding to pay for Contractor’s services under this Agreement, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of funds used by the City to pay fees and/or expenses for Contractor’s services, based on Contractor’s performance under this Agreement or any Task Order, Contractor shall repay, refund, and/or reimburse the City for all of such fees and/or expenses required to be paid by the City or in the case of a City audit, amounts requested or disallowed by the City, as unallowed, unauthorized, or otherwise inconsistent with this Agreement or Task Order. Contractor shall be given a reasonable opportunity to review and dispute in writing the findings of such audit or inspection. Any adjustments or payments that must be made as a result of any such audit or inspection of the Contractor’s performance under the Agreement, including invoices or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the written findings by the City to the Contractor. In no event will Contractor be responsible for disallowed, recaptured or reimbursed amounts that the City has paid to any party other than Contractor. Each Party shall bear its own costs of any such audit.

6.10.8 Contractor shall maintain any financial records as may be required by 2 CFR Part 200, Subpart D - Post Federal Award Requirements and as may be necessary to document compliance with **Exhibit “D”**, Non-Exclusive List of Applicable Laws, Regulations, and Rules.

6.11 Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

6.12 Ambiguities

If any term of this Contract is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.13 Survival

SAMPLE

Contractor shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract, including but not limited to, the indemnity provisions.

6.14 Publicity

Contractor shall make no announcement or release of information concerning this Contract unless the release has been submitted to and approved, in writing, by the Director

6.15 Parties In Interest

This Contract does not bestow any rights upon any third party but binds and benefits the City and Contractor only.

6.16 Successors and Assigns

This Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Contract does not create any personal liability on the part of any officer or agent of the City, or the Contractor.

6.17 Business Structure and Assignments

Contractor shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Contract without the Director's prior written consent.

6.18 Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFORE. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS CONTRACT.

6.19 Acceptance and Approvals

Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Contractor, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents

SAMPLE

prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Contractor, its employees, agents, subcontractors or suppliers pursuant to this Contract.

6.20 Dispute Resolution

6.20.1 For purposes of this Section “Project Administrator” means the person the Director designates to monitor the progress of all Parties’ performance under this Agreement.

6.20.2 Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Contractor must be handled as described below:

6.20.2.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

6.20.2.2 If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within seven business days following receipt of the Project Administrator’s original decision. The Director shall provide Contractor with a written response to the appeal within 14 business days following its receipt. The decision of the Director is final.

6.21 Remedies Cumulative

Unless otherwise specified elsewhere in this Contract, the rights and remedies contained in this Contract are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Contract except in accordance with its provisions.

6.22 Federal Requirements

The Parties acknowledge that City may seek reimbursement from the HUD for costs incurred under this Agreement. Contractor shall comply with all Community Development Block Grant – Disaster Recovery (“CDBG-DR”) program requirements outlined in **Exhibits “D”, “D-1” and “D-2”** and made a part hereof. Notwithstanding the previous sentence, the Parties acknowledge that the Federal Government is not a party to this Agreement and is therefore not obligated to perform any actions under this Agreement. Contractor shall comply with and shall perform services in compliance with all GLO/HUD requirements outlined in this Agreement and otherwise applicable to the Services performed, any subsequent audit by the GLO, HUD, or any other reviewing agency, and reimbursement, if any, from the GLO, HUD, or any other federal agency for the costs incurred under this Agreement.

6.23 Flow-Through Provisions

6.23.1 The City is a party to the GLO Harvey Contract that contains the provisions set out in **Exhibit “I”** to this Agreement. Contractor shall comply with the applicable terms set out in **Exhibit “I”** as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in **Exhibit “I”**, in which case the terms of this Agreement shall apply. In the event

SAMPLE

Contractor believes a term or condition of the GLO Harvey Contract is inapplicable, Contractor must seek clarification from the Director. The Director, in his sole but reasonable discretion, shall determine which terms are applicable to this Agreement, any Task Order, and the services provided thereunder. If the Parties fail to reach an agreement, Contractor may submit a dispute in accordance with Section 6.21 of this Agreement. Contractor may utilize the Section 6.21 dispute resolution process under this Section regardless of whether the dispute involves a question of law.

6.23.2 In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Contractor for services or expenses provided under this Agreement, Contractor shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Contractor's scope of work, ("Additional Flow Down Provisions"). Contractor's agreement to the Additional Flow Down Provisions must be in writing, signed by the Contractor and Director and approved by the City Attorney. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed 15 business days), the Parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his sole discretion may (i) immediately suspend Contractor from any further performance under the applicable Task Order(s), or (ii) terminate the applicable Task Order(s).

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "B"
FEE SCHEDULE
(TBD)

EXHIBIT "C"

EQUAL OPPORTUNITY CLAUSE

The applicant/Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this

Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant/Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The applicant/Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractor and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant/ Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractor and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

EXHIBIT "D"
CDBG-DR REQUIREMENTS

For purposes of this Exhibit G-1, "Program or Activity" shall refer to the Project and "Provider" shall refer to "Contractor", as applicable

NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:

GENERALLY

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

LABOR STANDARDS

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

GRANT AND AUDIT STANDARDS

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

HISTORIC PROPERTIES

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

AIR QUALITY

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. §7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

HUD ENVIRONMENTAL STANDARDS

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

ENVIRONMENTAL JUSTICE

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

SUSPENSION AND DEBARMENT

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

OTHER REQUIREMENTS

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

ACQUISITION / RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

EXHIBIT “D-1”

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This Addendum and Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that neither the Contractor, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Addendum, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City’s determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded*, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-Procurement Programs.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

CERTIFICATION

- 1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Contractor Company Name

Name and Title

Signature

Date

EXHIBIT “D-2”

ANTI-Lobbying Certification

The undersigned Contractor certifies, to the best of his or her knowledge, that:

- 1) No Federal appropriated funds appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any City agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 USC § 3801 *et seq.*, apply to this certification and disclosure, if any.

Contractor Name:	
President:	
Name of Authorized Official:	
Signature:	
Date:	

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of

(Name) (Print/Type) (Title)

_____ (Contractor)

(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the Contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20__.

_____ A written Drug Free Workplace Policy has been implemented and employees
Initials notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug
Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the
Initials Mayor's Drug Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31.
Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact positions
during this reporting period is _____.

_____ From _____ to _____ the following testing has occurred:
Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____

Number Employees Positive _____

Percent Employees Positive _____

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance
Initials with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "G"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in '5.18 of Executive Order No. 1-31, that will be involved

in performing _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "H"

GLO Agreement No. 19-147-001-B489 and Amendment No. 1 of said GLO Agreement